

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAVE NOGLE,)	Case No. DISM-98-0008
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
THE EVERGREEN STATE COLLEGE,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held on September 9, 1999, in the Personnel Appeals Board hearing room in Olympia, Washington. WALTER T. HUBBARD, Chair, and NATHAN S. FORD Jr., Member, reviewed the record, including the file, exhibits, and the entire taped proceedings, and participated in the decision in this matter.

1.2 **Appearances.** Appellant Dave Nogle appeared pro se. Respondent The Evergreen State College was represented by Robert W. Kosin, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for gross misconduct. Respondent alleges that Appellant verbally and physically abused a coworker.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Johnson v. Lower Columbia College, PAB No. D93-077 (1994).

II. FINDINGS OF FACT

2.1 Appellant Dave Nogle was a Custodian and permanent employee for Respondent The Evergreen State College (TESC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on February 24, 1998.

2.2 By memorandum dated February 5, 1998, Ruta Fanning, Vice President for Finance and Administration, notified Appellant of his immediate dismissal. Ms. Fanning charged Appellant with gross misconduct and alleged that Appellant engaged in a verbal and physical confrontation with a coworker.

2.3 Appellant has no history of prior formal disciplinary action, however, Appellant received a written reprimand on October 16, 1997, for his failure to follow written custodial services procedures and practices.

2.4 On January 29, 1998, Appellant's supervisor, Bruce Van de Walker, delivered to Appellant a written notice memorializing their conversation on the previous day when he discovered Appellant playing basketball in the college gymnasium and then later doing homework during work hours.

1 2.5 On the afternoon of January 29, staff had gathered in the break room to receive their final work
2 assignments prior to the end of the shift. Appellant and a number of other custodial staff, including
3 Custodian Douglas Thompson, were in the break room. Appellant began to comment out loud, but to no
4 one specifically, that staff had told on him about playing basketball during work hours. Appellant then
5 accused Mr. Thompson of “watching” him. Appellant and Mr. Thompson engaged in a verbal
6 confrontation in which they both used profanity. Appellant then forcefully flung a pen or pencil which
7 bounced off a table and hit a wall. The pen/pencil was thrown in Mr. Thompson’s direction, narrowly
8 missing him. Appellant then stated to Mr. Thompson, “One more word, and I’ll throw this chair at
9 you.” Mr. Van de Walker, who was not aware of the argument, entered the break room and the
10 altercation ceased. Mr. Van de Walker gave staff their afternoon assignments and staff proceeded to
11 their work areas.

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13 2.6 Mr. Thompson proceed to his work area and to complete his work assignment. However, he
14 decided instead to report the events which had taken place with Appellant to the personnel office. While
15 headed in the direction of the personnel office, Mr. Thompson reached Appellant and another Custodian
16 Wendy Hume, who were on their way to their work assignments. Mr. Thompson told Appellant that he
17 was “sick of his shit” and that he was going to report Appellant to personnel. Appellant and Mr.
18 Thompson engaged in a verbal confrontation. Ms. Hume ran toward Mr. Van de Walker’s office to tell
19 him what was happening. Mr. Van de Walker heard Ms. Hume yelling that there was going to be a fight
20 and headed in her direction.

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23 2.7 Appellant rushed towards Mr. Thompson, stating, “Come on. Let’s go!” Appellant and Mr.
24 Thompson were within inches of each other and Appellant put both his hands on Mr. Thompson’s chest
25 and pushed him back.
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1 2.8 When Mr. Van de Walker reached Appellant and Mr. Thompson, they were still arguing and
2 were standing within inches of each other. Neither Ms. Hume nor Mr. Van de Walker witnessed
3 Appellant pushing Mr. Thompson. Mr. Van de Walker separated Appellant and Mr. Thompson and
4 took them to the Campus Police Services office.
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6 7 **III. ARGUMENTS OF THE PARTIES**

8 3.1 Respondent argues that Appellant's temper was becoming volatile and that Appellant used
9 profanity and violence to deal with his problems in the workplace. Respondent argues that Appellant
10 displayed a pattern of progressively aggressive behavior toward a coworker which included throwing a
11 pen/pencil at Mr. Thompson and then ultimately shoving him when Mr. Thompson stated that he was
12 going to report Appellant to personnel. Respondent argues that it has a duty to provide its employees
13 with a safe workplace and that Appellant's misconduct interfered with its ability to do so. Respondent
14 argues that Appellant's assault on a coworker warrants dismissal and requests that the Board uphold the
15 sanction.
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18 3.2 Appellant admits using profanity and throwing a pencil, however, he denies that he threw the
19 pencil in Mr. Thompson's direction. Appellant contends that Mr. Thompson instigated in the incident in
20 the break room. Appellant denies pushing Mr. Thompson and asserts that he put his hands up to protect
21 himself but did not "jar" Mr. Thompson. Appellant asserts that he was creating space between Mr.
22 Thompson and himself and that his actions were not harmful or aggressive. Appellant asserts that there
23 was no wrongdoing on his part.
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25 **IV. CONCLUSIONS OF LAW**

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1 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
2 herein.

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4 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the
5 charges upon which the action was initiated by proving by a preponderance of the credible evidence that
6 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was
7 appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't
8 of Corrections, PAB No. D82-084 (1983).

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10 4.3 Abuse of fellow employees is established when it is shown that the employee wrongfully or
11 unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077
12 (1994).

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14 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry
15 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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17 4.5 Respondent has met its burden of proof that Appellant's interactions with Mr. Thompson on
18 January 29, 1998, constituted gross misconduct. Appellant's behavior was clearly unprofessional and
19 inappropriate and Appellant's actions interfered with Respondent's ability to provide a safe and secure
20 workplace for its employees. Although Appellant asserts that Mr. Thompson was the instigator during
21 the incidents, credible testimony established that Appellant initiated the aggression which culminated in
22 his assault of Mr. Thompson, and he must ultimately be held responsible for his actions.
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1 4.6 Under the facts and circumstances of this case, including the seriousness of the offenses, we
2 conclude that Respondent has proven that the sanction of dismissal is appropriate, and the appeal should
3 be denied.

4
5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dave Nogle is denied.

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8 DATED this _____ day of _____, 1999.

9
10 WASHINGTON STATE PERSONNEL APPEALS BOARD

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13 Walter T. Hubbard, Chair

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16 Gerald L. Morgen, Vice Chair

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18 _____
19 Nathan S. Ford Jr., Member